

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official)	
capacity as Commissioner-In-)	
Possession of Sentinel Trust Company)	
and Receivership Management, Inc.,)	
Receiver of Sentinel Trust Company,)	
)	
Plaintiffs,)	No. 4980
)	
v.)	
)	
)	
)	
DANNY N. BATES, et al.,)	
)	
Defendants.)	
)	

**PLAINTIFFS' REPLY TO DEFENDANT DANNY BATES' OBJECTION TO
MAKING FINAL THE MEMORANDUM AND ORDER DATED APRIL 7, 2010**

This filing is Plaintiffs' Reply to Defendant Danny Bates' Objection to Making Final the Memorandum and Order Dated April 7, 2010. In his Objection, Defendant Danny Bates presents no reason to delay making that portion of the Court's April 7, 2010 Order relating to himself and Deanna June Bates final. Rule 54.02 Tenn. R. Civ. P.

At its core, Danny Bates' Objection is merely a complaint that the Court should not have granted Plaintiffs' Motion for Summary Judgment as against him. For example, Danny Bates complains that the amount of the judgment against him in the Court's April 7, 2010 Order -- \$4.395 million (which was proven by the Bryant Affidavit (Exhibit 27 to Plaintiffs' Motion for Summary Judgment)) -- was subject to dispute. Mr. Bates contends that such was "disputed" because "the defendants have argued¹ continually that

¹ "Argument" does not suffice to defeat a well-supported motion for summary judgment.

[the amount of fiduciary funds shortfall -- i.e., the \$4.395 million -- was not due to his actions, but rather was] due to the excessive fees and expenses paid to the Receiver and its other application of funds coming into the receivership estate.” Objection at ¶10 (emphasis added; brackets added; footnote added). Danny Bates can raise the issue of whether there was genuine dispute of material fact concerning the \$4.395 million amount on appeal, but such is not a reason to forestall entry of the order against him as a final order pursuant to Rule 54.02 Tenn. R. Civ. P.²

At the end of his Objection, Mr. Bates informs the Court that Ms. Bates suffered a major stroke on April 11, 2010 and is unable to represent her interests. Mr. Bates states that the Court’s April 7, 2010 Order does not address Ms. Bates’ asserted marital interest in properties deemed fraudulently transferred by that April 7, 2010 Order and that she needs counsel appointed for her (due to her incapacitated state) to protect those interests. Objection at ¶¶12-14.

Plaintiffs reply at several levels. In the first instance, and as examined in Plaintiffs’ Motion for Emergency Order Prohibiting Defendants Danny Bates and Deanna June Bates From Disposing, Transferring or Further Encumbering Property (filed contemporaneously herewith), apparently Ms. Bates is well enough to participate in an attempt to sell the 205 Bastin Road property which, in its April 7, 2010 Order, this Court

² Moreover, various portions of Danny Bates’ Objection are simply misleading. For example, Danny Bates implies that during the progression of the bulk of this proceeding, a discovery stay was in place. Objection at ¶3. That is incorrect. This case was filed on May 17, 2005 and it was not until January 29, 2009 that this Court ordered a stay of these proceedings pending disposition of the criminal action against Bates. That stay lasted until October 2009. During the first three and one-half (3/12) years of this action, Plaintiffs did conduct discovery. Danny Bates, who was represented by counsel during that 3/12 years, chose not to do so. Another example of Danny Bates’ misstatements in his Objection is his pronouncement that his “criminal court verdict does not appear to have been properly introduced into evidence in [this case].” Objection at ¶6 (brackets added). Such statement is incredible when Exhibit 1 to the Motion for Summary Judgment is the verdict form wherein Danny Bates was found guilty in the Tennessee state criminal proceedings against him.

found to have been fraudulently transferred to her. Therefore, and respectfully, if she is well enough to do that, she should be well enough to "protect her marital interests."

Second, in relation to the Motion for Summary Judgment, Ms. Bates did raise the argument of her "marital interest" in the 205 Bastin Road house -- the house that was built with money stolen from Sentinel Trust. That argument was not noted in the Court's April 7, 2010 Order probably because the Court did not find any merit to the argument. Ms. Bates (or whomever acts on her behalf, if she truly is incapacitated) can raise that argument on appeal. But again, simply because the April 7, 2010 Order does not reference Ms. Bates' "marital interest" argument does not create a reason to delay the April 7, 2010 Order from being entered as final regarding Danny Bates and Ms. Bates.

Third, Ms. Bates' asserted incapacitation -- and supposedly her inability to respond to Plaintiffs' Rule 54.02 Motion -- simply does not change the fact that all claims against her, other than those relating to the fraudulent transfers, have been non-suited and, thus, there is no reason to delay entry of final judgment as to the fraudulent transfers that occurred in April and July 2004 from Danny Bates to her. Again, Ms. Bates (or someone acting on her behalf) can appeal the April 7, 2010 Order, but there is no argument she can advance, even if she were not incapacitated, as to why a Rule 54.02 certification should not be made.

Lastly, the issue of incapacitation of a party in a civil action is not addressed through the appointment of counsel. Indeed, as Danny Bates knows (because he has asked several times), there is no right to appointment of counsel in civil actions. Incapacitation of a party is addressed through Rule 17.03 Tenn. R. Civ. P. which states:

If an infant or incompetent person does not have a duly-appointed representative, or if justice requires, he or she

may sue by next friend. The Court shall at any time after the filing of the complaint appoint a guardian ad litem to defend an action for an infant or incompetent person who does not have a duly-appointed representative or whenever justice requires. The court may in its discretion allow the guardian ad litem a reasonable fee for services.

Plaintiffs do not know the seriousness of Ms. Bates' condition and based on her necessary involvement in the attempted sale of the 205 Bastin Road house, the seriousness of her condition is, respectfully, called into question. But if Mr. Bates' representation that his wife is "unable to represent her interest" is true, she would, thus, be deemed as "incompetent" before the Court. That being the case -- and because Ms. Bates' next required action (if Plaintiffs' Rule 54.02 Motion is granted) would be the filing of a Notice of Appeal, if she so chose -- Danny Bates could, in the interim, file a petition to be declared Ms. Bates' "Next Friend" or guardian ad litem, or the Court could simply order that such occur.³ Rule 17.03 Tenn. R. Civ. P. As Next Friend, Mr. Bates could then proceed to protect Ms. Bates' interests going forward until Ms. Bates' capacity was restored. Mr. Bates would, of course, be proceeding as Next Friend of Ms. Bates pro se. Plaintiffs would not consider this as Mr. Bates engaging in the unauthorized practice of law, but rather would consider Ms. Bates as proceeding pro se through the actions of her Next Friend.⁴

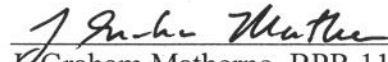
Accordingly, Plaintiffs' assert that Danny Bates' Objection provides no reason to delay entry of the Court's April 7, 2010 Order against him and Ms. Bates as final. Rule 54.02 Tenn. R. Civ. P. Plaintiffs further assert that the Court should address Ms. Bates'

³ Plaintiffs would stress that such petition should be supported by (or any order be conditioned upon) medical proof of Ms. Bates' condition and incapacity.

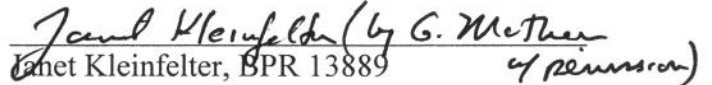
⁴ In referencing this "Next Friend" solution under Rule 17 Tenn. R. Civ. P., Plaintiffs would stress that the Court should not provide for Mr. Bates to receive any fee for his services.

incapacitation -- once shown through medical proof to be genuine -- by ordering that Mr. Danny Bates be appointed Ms. Bates' Next Friend/guardian ad litem (without ability to charge any fee for services as costs) and allow Ms. Bates to proceed pro se, through her Next Friend/guardian, for as long as her incapacitation exists. Rule 17.03 Tenn. R. Civ. P.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail and by Federal Express as noted, on this the 29th day of April, 2010.

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